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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the matter of

Review of the Pioneer's
Preference Rules

ET Docket No. 93-266

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**PETITION FOR RECONSIDERATION
Or, In The Alternative
REQUEST FOR CLARIFICATION**

CELSAT, INC., ("CELSAT") an applicant for a Pioneer's Preference,¹ pursuant to Section 1.429 of the Commission's rules (47 C.F.R. §1.429), hereby respectfully petitions the Commission for reconsideration or, in the alternative, clarification of its First Report and Order released in the above-captioned proceeding on January 28, 1994 (FCC 93-551). CELSAT has been operating under the assumption that, to the extent the Commission has not yet made an initial disposition of CELSAT's pending request for a pioneer's preference in the context of ET Docket No. 92-28 (particularly at the time it denied five of six other requests in that same proceeding), Commission action on CELSAT's request would be forthcoming sometime in the near future. Moreover, such Commission action would be governed by the existing pioneer's preference rules for the reasons set out in the above order. CELSAT submits that, in view of the

¹ See, In the Matter of CELSAT, Inc. Request for a Pioneer's Preference Regarding its Petition for Rulemaking to Allocate Spectrum and to Establish Rules and Policies for a New Hybrid Personal Communications Network Service, PP-28, filed February 10, 1992, and Amendment thereto, filed December 22, 1993.

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events and actions discussed below, this is the only possible interpretation of CELSAT's present status. In support thereof, CELSAT states as follows:

CELSAT's request for a pioneer's preference, filed February 10, 1992, was timely filed along with those of the other candidates seeking such status in the above 1 GHz satellite bands.² CELSAT's request was placed on Public Notice on March 9, 1992. Also, in an apparent response to CELSAT's filing the Commission issued a Public Notice two day's later (March 11, 1992) in which it established April 10, 1992 as "the final day for filing any additional pioneer's preference requests with regard to proposals to establish a system or systems of low-earth orbit satellites or other satellite systems that request authorization to operate on the 1610-1626.5 and 2483.5-2500 MHz bands." [Emphasis added.] Public Notice, March 11, 1992. CELSAT's request related the provision of both mobile satellite service (MSS) and radio position determination services (RDSS) in the 1610/1626.5 and 2483.5/2500 MHz bands;³ it also proposed a hybrid terrestrial mobile service capability in the same bands or, if necessary, in some closely located but separate bands.⁴ Thus, there can be no question that CELSAT's pioneer's preference

² Earlier requests for Pioneer's Preference in the above 1 GHz bands were filed by Constellation Communications, Inc. and TRW, Inc. in June, 1991. *See*, Public Notice, August 13, 1991, clarified in Public Notice DA 91-1100, August 29, 1991. CELSAT's GEO request was filed on February 10, 1992 and assigned file number PP-28. Additional requests were filed by Ellipsat, Loral/Qualcomm, and Motorola. All five LEO requests were assigned file numbers PP-29 through PP-33.

³ *See*, CELSAT's Pioneer's Preference request and Amendment thereto, *Id.*, n. 1, and CELSAT's Petition for Rulemaking, *In the Matter of Parts 2, 22 and 25 of the Commission's Rules for an Allocation of Frequencies and Other Rules for A New Nationwide Hybrid Space/Ground Cellular Network for Personal/Mobile Communications Services*, RM-7927, filed February 6, 1992, and Amendment thereto, filed July 21, 1993.

⁴ *See*, CELSAT's Petition for Reconsideration, ET-Docket No 92-28, filed October 5, 1992 and ERRATUM, filed October 7, 1992. CELSAT clarified and confirmed that, in a band sharing environment such as being considered in the MSS/RDSS L/S-band, CELSAT would operate its space component in an MSS-only mode in the 1610/1626.5 and 2483.5/2500

request for a satellite system authorization in the above bands falls within the scope of the Commission's above 1 GHz Pioneer's Preference proceeding established by its March 11, 1992 Public Notice in ET Docket No. 92-28.⁵

In the subject First Report and Order the Commission confirmed that it would continue to apply its existing pioneer's preference rules to proceedings in which Tentative Decisions have been issued. The Commission "conclude[d] that it would be inequitable to apply any changes in [its] rules to pending proceedings in which Tentative Decisions have been issued" and that "preference applicants in these proceedings have submitted their requests and publicly disclosed substantial detail of their system designs in reliance on the continued applicability of the pioneer's preference rules."⁶ Among the proceedings which the Commission specifically identified to be covered by the existing rules is the one pertaining to satellite systems in the above 1 GHz bands.⁷ In its initial Tentative Decision in ET Docket No. 92-28 (MSS proceeding) the Commission granted no tentative preferences to any of the six pending requests, but tentatively denied requests to all of the five candidates which had proposed LEO use of the

MHz bands. The Commission has since acknowledged and accepted CELSAT's clarification in this respect. Report and Order, ET Docket No. 92-28, released January 12, 1994 (FCC 93-547), at paras. 36-37.

⁵ In a further action taken in CC Docket No. 92-166 on January 19, 1994, the Commission apparently limited access to the MSS/RDSS bands at 1610/1626.5 and 2483.5/2500 MHz to LEO satellite systems only. See, FCC NEWS RELEASE, January 19, 1994. In anticipation of such action CELSAT amended its Petition for Rulemaking to request an allocation of the 2 GHz bands at 1970/1990 and 2160/2180 MHz for a combined HPSC and MSS use over the United States. Id., n. 4. Notwithstanding CELSAT's amendment, just as the Big LEO candidates have their sights on the 2 GHz ET bands, CELSAT will continue to pursue its legal right of access to the MSS/RDSS L/S bands.

⁶ First Report and Order, Id., at paras. 1 and 9.

⁷ Id., at n. 1.

spectrum -- i.e., those of Constellation, Ellipsat, Motorola, TRW and Loral/Qualcomm.⁸ The FCC took no action on the sixth request -- namely, that of CELSAT, the sole request pertaining to a non-LEO system.

CELSAT has reasonably relied on the Commission's limited decision in the MSS proceeding as nothing more than an indication that further action with respect to CELSAT's pending request in that same proceeding eventually will be forthcoming. The Commission recognized in the First Report and Order that it would be inequitable and prejudicial to apply any changes in the pioneer's preference rules to those requests covered in proceedings where Tentative Decisions have been made. CELSAT's request is included in one of the covered proceedings; and it is certain that CELSAT will be prejudiced if its pioneer's preference status is not also determined under the existing preference rules.⁹ As evidence of the prejudicial effects, in support of its request CELSAT has made very generous and significant disclosures which have been used and relied upon by the other candidates to improve their system designs. CELSAT's early petition for rulemaking included extraordinary detail, not only as to the CELSAT system, link budgets, etc., but also as to coping with other potential interference

⁸ Notice of Proposed Rule Making and Tentative Decision, ET Docket No. 92-28, 7 FCC Rcd. 6414 (1992), at n. 2 and ¶33.

⁹ See, First Report and Order, Id., at ¶9, "[w]e conclude that it would be inequitable to apply any changes in our rules to pending proceedings in which Tentative Decisions have been issued."

Moreover, CELSAT has contributed very substantially to the progress in the MSS/RDSS rule making in ET Docket No. 92-28 through its previous filings in support of its own pioneer's preference request and rule making petition, as well as through its participation in the Negotiating Rule Making Advisory Committee in CC Docket No. 92-166. See, CELSAT Reply in Support and Opposition In Part to the Jointly Filed Comments of Motorola and Loral/Qualcomm Satellite Services, CC Docket No. 92-166 and ET Docket No. 92-28, October 23, 1993.

considerations unique to the subject bands. During the Negotiated Rule Making Advisory Committee proceedings, for example, every other candidate in ET Docket No. 92-28 redesigned its system to reflect the key features of the CELSAT HPCS design (namely, use of smaller beam sizes, higher beam numbers, and, in some cases, allocations of higher power levels) to increase their respective capacities and enhance their ability to share the MSS/RDSS spectrum with CELSAT and each other. CELSAT has been further prejudiced by its disclosures in the sense that the distinctively superior quantitative margins in terms of capacity, unit cost per MHz, and spectral efficiency inherent in its design have been narrowed to the extent that others have since learned from its teachings and are in the process of incorporating them into their own systems. Moreover, to the extent the Commission finally adopts the spectrum sharing arrangement (or some version of it) recently announced in ET Docket 92-28 to the exclusion of CELSAT and other GEO systems, CELSAT stands to be foreclosed from a spectrum allocation in the MSS/RDSS band -- the sharing feasibility of which was substantially demonstrated by CELSAT.¹⁰

Finally, in all of the major MSS actions since CELSAT filed its pioneer's preference request, both the Commission and the Office of Engineering and Technology have consistently treated CELSAT and its proposals as a part of the MSS proceeding. This is irrefutable.¹¹ As such, CELSAT's preference request must and should be treated as a part of that

¹⁰ See, CELSAT Reply In Support, Id., n. 9.

¹¹ There can be no question that CELSAT's pending pioneer's preference request is part of the proceedings in Docket No. 92-28. As noted, *supra*, CELSAT timely filed its request in the above 1 GHz band; immediately after placing CELSAT's request on Public Notice, on March 11, 1992 the Commission established a cut-off date for all further requests in the same bands; shortly after that, the Office of Engineering and Technology issued an Order consolidating CELSAT's pioneer's preference request (PP-28), with the other Big LEO pioneer's preference requests (PP-29 through PP-33) in ET Docket No. 92-28 (see, [Footnote continued, next page ...])

proceeding (*albeit* an unfinished part) and, therefore, is entitled to consideration under the existing pioneer's preference rules. CELSAT's request has been pending for over two years; the Commission should make its next action in that proceeding a Tentative Decision favoring CELSAT's pending pioneer's preference request.¹²

Accordingly, to the extent necessary the Commission is respectfully urged to clarify the effect of its First Report and Order in the above-captioned proceeding to reflect CELSAT's understandings as described herein -- namely, that CELSAT's pending pioneer's preference request shall be entitled to treatment under the existing preference rules . In the

[Footnote continued from previous page.]

Order Denying an Extension of Time for Comments and Replies, 7 FCC Rcd. 2361 (1992)); and, the Commission made an initial ruling on CELSAT's Rule Making petition in the same order in which it reached its Tentative Decisions with respect to the Big LEO pioneer's preference requests (Notice of Proposed Rule Making and Tentative Decision, Id., n. 8, at n. 15; cf., Report and Order, ET Docket No. 92-28, Id., n. 4).

¹² According to FCC Rule 1.402(a) the Commission may grant a pioneer's preference without taking action on the applicant's separate petition for rule making if the Commission already is addressing the new service or technology in an existing proceeding. See, Public Notice, March 11, 1992, ET Docket No. 92-28. Clearly, such a rule making is already well underway; moreover, the Commission has indicated that it will consider CELSAT's proposals in that proceeding in a separate action. Notice of Proposed Rule Making and Tentative Decision, Id., n. 11, at n. 15.

Alternatively, the Commission could open a separate HPCS/MSS proceeding for addressing CELSAT's Petition for Rule Making in RM-7927. In any event, pioneer's preference requests and rule makings can be treated separately such that CELSAT's pioneer's preference could and should be dealt with in the context of ET Docket No. 92-28 as urged above, irrespective of where the Commission chooses to treat CELSAT's rule making petition. See, Rule Sections 1.402 and 1.403, and FCC Public Notice, DA 91-1100, released August 29, 1991.

Finally, Loral/Qualcomm recently opposed CELSAT's amendment to its pioneer's preference request on the grounds that CELSAT has not yet filed an application. While there is no such requirement in the preference rules, Loral/Qualcomm's point will soon be moot.

alternative, if a resolution along such lines was not just an oversight but not intended under the First Report and Order, then the Commission is respectfully requested to reconsider its decision in view of the points raised in this petition.

Respectfully submitted,
CELSAT, INC.

By: 

Victor J. Toth

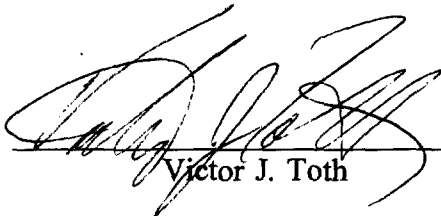
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Its Attorney

February 14, 1994

CERTIFICATE OF SERVICE

This is to certify that a copy of the preceding Petition for Reconsideration has been served this date on all parties indicated on the attached service list.


Victor J. Toth

February 13, 1994